IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 2905 OF 1999

Mr.Sakir Mirza. ...Applicant
V/s.
The State of Maharashtra. ...Respondent

Mr.Ashish U. Mashru for Applicant.
Ms.S.D. Shinde, APP for State.

CORAM : V.M. KANADE, J.

DATED : JANUARY 16, 2006

P.C. :-

. Heard learned Counsel for the applicant and learned APP for the State.

. The applicant is original complainant who filed the complaint under Section 138 of the Negotiable Instruments Act. The application was filed in November 1998 and thereafter it was kept on 5th August, 1999. However, on that date, the complainant's Advocate could not remain present.

2. It is stated by the applicant in this application that he was suffering from slip disc problem as a result he was advised complete bed rest. Learned

Counsel appearing on behalf of the applicant submitted that the Magistrate dismissed the complaint on the next date without giving an opportunity to the complainant.

3. In my view, the Magistrate ought to have exercised his discretion vested in it under Section 256 of Cr.P.C. and should have given reasonable opportunity to the complainant. The impugned order, therefore, is set aside. The matter is remanded back to the Metropolitan Magistrate Court who shall consider the submission of the complainant and thereafter take an appropriate decision in accordance with law.

. Application is allowed in the above terms.

(V.M. KANADE, J.)